IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Karamveer. Versus State of Rajasthan.

S.B. Criminal Jail Misc. Petition No. 363/2006

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Narendra Kumar. Versus State of Rajasthan.

S.B. Criminal Jail Misc. Petition No. 362/2006

...

Rustam. Versus State of Rajasthan.

S.B. Criminal Jail Misc. Petition No. 69/2006

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Nayeem Mohd. Versus State of Rajasthan.

S.B. Criminal Jail Misc. Petition No. 1203/2005

and

Omkar. Versus State of Rajasthan.

S.B. Criminal Jail Misc. Petition No. 349/2006

...

Date of Order: April 25, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Kalu Ram Bhati, Amicus Curiae, for the petitioners.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:
Reportable.

These criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the

Code" hereinafter) have been filed by the petitioners through jail and involve common questions of law and facts and also arise out of the common judgment and order dated 10-4-2002 passed by the Additional Sessions Judge, Jalore (for short, "the trial Court" hereinafter) in Sessions Case No. 111/2001 (53/2000) convicting and sentencing the petitioners for the offences under Section 395 IPC and Section 3/25 of the Arms Act. The judgment and order of the trial Court, convicting the petitioners for the offences under Section 395 IPC was affirmed by by this Court vide judgment dated 16-7-2003 passed in S.B. Criminal Appeals No. 340/2002 and 408/2002, however, the substantive sentence for the offence under Section 395 IPC was reduced from ten years to seven years rigorous imprisonment. By these petitions, the petitioners seek direction to run the substantive sentences awarded to them concurrently.

I have heard learned Amicus Curiae appearing for the petitioners and the Public Prosecutor for the State. Perused the judgment and order of the trial Court, as also the judgment of this Court dated 16-7-2003.

By the judgment and order dated 10-4-2002, the trial Court convicted petitioner Narendra Kumar for the offences under Section 395 IPC and Section 27 of the Arms Act; petitioners Nayeem Mohammed, Rustam and Omkar for the

offences under Section 395/34 and Section 27 of the Arms Act; and petitioner Karamveer for the offences under Section 395/34 IPC and Section 3/25 of the Arms Act. The trial Court sentenced each of the petitioners for the offence under Section 395, 395/34 IPC for ten years rigorous imprisonment and a fine of Rs. 2000/-, in default of payment of fine further to undergo one month's simple imprisonment. For the offence under Section 27 of the Arms Act, as also the offence under Section 3/25 of the Arms Act, each of the petitioners was sentenced to three years rigorous imprisonment and a fine of Rs.1000/-, in default of payment of fine further to undergo six months simple imprisonment. On appeals being filed by the petitioners, being S.B. Criminal Appeal No.408/2002, Omkar & ors. Vs. State of Rajasthan, and S.B. Criminal Appeal No.340/2002, Nayeem Mohammed & Anr. Vs. State of Rajasthan, this Court modified the conviction of the petitioners from Section 395/34 IPC to Section 395 IPC and also reduced the substantive sentence, as noticed above. The judgment and order of the trial Court convicting and sentencing the petitioners under Sections 27 and 3/25 of the Arms Act was not interfered with by this Court.

It is contended by the learned Amicus Curiae appearing for the petitioners that the trial Court, by the judgment and order dated 10-4-2002, while sentencing the

petitioners, has not specifically ordered as to whether the substantive sentences to run consecutively or concurrently. While deciding the appeal also, it has not been ordered as to in what manner the substantive sentences to run: whether consecutively or concurrently and according to the learned Amicus Curiae, when no such direction is issued regarding running of the substantive sentences consecutively then it must be construed that the sentences are to run concurrently. Learned Amicus Curiae has relied on a decision of this Court in Satya Narain Vs. State of Rajasthan, 2003 (1) Current Judgements (Cri.) 381, wherein, while construing the provisions of Section 427 of the Code, this Court held that when no specific direction is issued to run the sentences one after the another, i.e. consecutively, then the sentences are to run concurrently.

Section 427 of the Code reads as under:-

> "**427. Sentence on offender already sentenced for another offence.-** (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:
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> Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

> (2)When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

While considering the provisions of Section 428 and 427 of the Code, the Hon'ble Supreme Court, in State of Maharashtra & Anr. Vs. Najakat Ali Mubarak Ali, (2001) 6 SCC 311, in para 26 of the reports, held that Section 428 of the Code is preceded by Section 427 which provides that when any person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such imprisonment shall commence at the expiration of the commencement to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. (emphasis supplied). Section 427 of the Code thus authorises a court of law to direct the sentence awarded by it to run concurrently, obviously keeping in view the facts and circumstances pertaining to the case of the accused. His detention pending investigation, enquiry or trial in that case or some other cases being relevant consideration while directing the sentences to run consecutively or concurrently.

From a reading of Section 427 of the Code, it is

clear that when sentence of imprisonment or imprisonment for life is imposed upon a person already undergoing the imprisonment but not imprisonment for life, such sentence shall commence at the expiration of the imprisonment already imposed and being undergone unless the Court directs that the subsequent sentence sentence shall run concurrently with such previous sentence, subject, however, to the proviso given therein and the specific provision made in sub-section (2) of Section 427 of the Code with respect to a convict already undergoing life imprisonment.

From these provisions, it is clear that the Court may direct the subsequent sentence of imprisonment to run concurrently with the previous substantive sentence of imprisonment. Such a direction can be given by the Court after taking into consideration the facts of the case while passing the substantive sentence. However, in the instant case, neither the trial Court, nor the Appellate Court, at the time of deciding the appeal, passed such direction and, therefore, the question as to whether such a direction can be given while exercising the inherent powers by this Court under Section 482 of the Code.

In Mohan Lal alias Hanuman Singh Vs. The State of Rajasthan, 1987 Cr.L.R. (Raj.) 241, the petitioner therein was convicted and sentenced. The sentences of imprisonment were varying in terms in the case and no order for those sentences to

run concurrently was passed in the judgment. This Court, while exercising the powers under Section 482 of the Code, ordered that the four sentences awarded to the petitioner therein for the offence under Section 457 IPC on different dates by the same Magistrate shall run concurrently.

In Hardeva & ors. Vs. State of Rajasthan, 2004 (1) WLC (Raj.) 295, this Court held that in exercise of the power under Section 482 of the Code, the Court may direct subsequent sentence to run concurrently with the previous sentence.

In Mukhtiar Singh Vs. State, 1995 Cri.L.J. 2057, while considering the provisions of Sections 427 and 482 of the Code, it was held by the Jammu & Kashmir High Court that where a convict, out of ignorance or because of default of his counsel for for any other reasons,. May omit to ask for running of the sentences concurrently in the subsequent trial, the High Court possess the inherent power to pass appropriate directions in a fit case and while doing so, it would not be altering any judgment or sentence in the process. The judgment remains intact and so does the sentence because the High Court, in such a case, would be only dealing with the manner of running of the sentence and nothing more.

In Mulaim Singh Vs. State, 1974 Cri.L.J. 1397, a Full Bench of Allahabad High Court held that it would be competent for the High Court, in exercise of its inherent power, to direct

that the sentence of imprisonment under a subsequent conviction shall run concurrently with a previous sentence even if the stage for exercise of discretion under Section 397 (1) of the Old Code (corresponding to Section 427 (1) of the New Code) is over in the circumstances where it would serve any of the three purposes mentioned in Section 561-A of the Old Code (corresponding to Section 482 of th New Code), i.e. to give effect to any order under the Code, or to prevent the abuse of the process of the Court, or otherwise to secure the ends of justice.

In Shersingh Vs. State of M.P., 1989 Cri. L.J. 632, a Full Bench of Madhya Pradesh High Court held that the inherent power of the High Court can be invoked under Section 482 of the Code even if the trial court or the Appellate or Revisional Court has not exercised its discretion under Section 427 (1) of the Code in directing running of previous and subsequent sentences concurrently. The inherent power of the High Court is not in any way fettered by the provisions of Section 427 (1) and it can be invoked at any stage even if there is no such order passed under Section 427 (1) by the trial Court or Appellate or Revisional Court and even though the conviction has become final.

Having regards to the facts and circumstances of the case and the fact that the petitioners have been convicted and sentenced for two different offences which were committed in

one and the same occurrence and were convicted and sentenced by the same judgment by the trial Court as by common judgment in appeals, in my view, to give effect to the order and the ends of justice would be met in directing the substantive sentences for the offence under Section 395 IPC an under Section 27, 3/25 of the Arms Act to run concurrently.

Consequently, the jail miscellaneous petitions under Section 482 of the Code are allowed and it is directed that the substantive sentence imposed upon the petitioners for the offence under Section 395 IPC and under Section 3/25 IPC and Section 27 of the Arms Act shall run concurrently. However, sentence in default shall run consecutively, i.e. one after the another.

(H.R. PANWAR), J.

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